

FILED  
STATE OF ALASKA  
APR 13 2016  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT DILLINGHAM

STATE OF ALASKA,

Plaintiff,

vs.

JACKLYN GOSUK,

Defendant.

*A-12749*  
*FC Cir 6-30-21*  
Case No. 3DI-15-00359 CR

**FINDINGS OF FACT AND RECOMMENDED ORDER ON REMAND TO GRANT  
MOTION TO SUPPRESS EVIDENCE**

**I. INTRODUCTION**

Defendant Jacklyn Gosuk filed a motion to suppress evidence seized by Alaska State Troopers that led to a conviction of the crime of importation<sup>1</sup> in the above-captioned matter. An evidentiary hearing was held on April 8, 2016 and the trial court thereafter denied the motion. Ms. Gosuk later pled guilty to importation but reserved her right to appeal the trial court's decision.<sup>2</sup> The Court of Appeals vacated the trial court's order denying the motion to suppress and remanded the matter back to the trial court, retaining jurisdiction. Hearings were held on April 8, 2021 and May 5, 2021, whereby the parties agreed that the trial court would not hear any new evidence, but instead would rely on the record established during the evidentiary hearing held on April 8, 2016. The State waived its opportunity to make any further written or oral argument. The defendant filed written arguments on May 26, 2021.

**II. FINDINGS OF FACT**

At 9:50 a.m. on October 13, 2015, Ms. Gosuk was contacted by Alaska State Trooper Mark Eldridge at the Coupchiak Air terminal in Dillingham. Trooper Eldridge was investigating an anonymous tip he received that morning from the VPSO in Togiak

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<sup>1</sup> AS 04.11.499(a).

that Ms. Gosuk was importing alcohol into the community of Togiak, which is a local option community that prohibits alcohol. Trooper Eldridge was aware that Ms. Gosuk had a history of importing alcohol. He approached Ms. Gosuk in the terminal wearing his uniform and police duty belt, including a firearm. There were other people in the terminal and he asked her to step outside so not to be around others. It was a cold morning and the stairs outside the terminal were icy. Ms. Gosuk stood on the top step and Trooper Eldridge stood at the bottom of the stairs; there was no other way to leave the terminal other than to descend the stairs.

The trooper asked Ms. Gosuk about the tip and asked whether she was carrying any alcohol to Togiak. Early on in the conversation, he told her twice that she did not have to talk to him. When he asked her "do you mind if I ask you a couple of questions," she responded "yeah." Despite her response, Trooper Eldridge continued to talk to her. He told her three times throughout the interview that regardless of whether Ms. Gosuk was transporting alcohol, she would not be going to jail that day. The trooper asked her four times if she was carrying alcohol and four times she denied having alcohol.

Trooper Eldridge also asked to look in Ms. Gosuk's luggage. He asked her nine times if she would mind if he looked in her bags and she never consented. Instead, she either denied the presence of alcohol: "it's winter clothes and winter boots," and "[i]t's all winter boots," or she provided no response and instead just paused between the troopers' questions. For example:

AST: Okay. Would you mind if we looked?

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<sup>2</sup> *Cooksey v. State*, 524 P.2d 1251 (Alaska 1974).

[pause]

AST: If we looked in there?

[pause]

AST: Is there any other type of drugs or anything like that you shouldn't be bringing out there?

Gosuk: No.

AST: No? Okay. I mean, would you mind? Again, it's up to you.

[pause]

Gosuk: It's all winter boots.<sup>3</sup>

The trooper interpreted the response to his ninth request to search Ms. Gosuk's luggage as consent. The exchange went as follows:

AST: Would you mind if we just took a look real quick?...We'd just pop it open, I'll take a look and be out of your hair. It's up to you. We won't do it in front of anybody either.

[pause; AST chuckles]

Gosuk: Yes.

AST: So, is that okay?

Ms. Gosuk did not respond to his question "is that okay?" Before she could respond, Trooper Eldridge quickly said, "okay, here, why don't you come on with me," and proceeded to the airplane where he asked Ms. Gosuk to identify her luggage. When they approached the luggage, the trooper asked if Ms. Gosuk minded if he looked

inside. Although there was no audible response,<sup>4</sup> the trooper said "I see you don't mind. No, you don't mind?" Again, without getting a response, the trooper proceeded to open Ms. Gosuk's luggage.

While Trooper Eldridge was opening the luggage, he asked Ms. Gosuk twice whether she minded if he looked inside. Neither time did Ms. Gosuk respond. After the totes were open, Ms. Gosuk admitted that, with the help of someone else, she had packed 25 bottles of alcohol.

The interview lasted a total of 13 minutes. Trooper Eldridge acknowledged that Ms. Gosuk did not speak much during the interview and at times, in response to his questions she would shrug her shoulders and shake her head no. Before the trooper started asking to look in Ms. Gosuk's luggage, he pointed out that he had helped Ms. Gosuk in the past, referring to Ms. Gosuk's "little girl." Ms. Gosuk tried to ask Trooper Eldridge about the sexual assault investigation that involved her daughter, but the trooper refocused the conversation on the potential for alcohol in Ms. Gosuk's luggage.

At the end of the interview, Trooper Eldridge asked Ms. Gosuk whether she understood that she did not have to talk to him and Ms. Gosuk indicated that she understood. The trooper did as he promised her and did not arrest her or take her to jail. He allowed her to continue on her travels to Togiak after he seized the alcohol.

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<sup>3</sup> Transcript of Proceedings at 17; Evidentiary Hearing at 9:04:07 (Apr. 8, 2016). The transcript of the conversation does not indicate a pause, but upon listening to the exchange, the pauses are clear.

<sup>4</sup> The transcript indicates Ms. Gosuk responded "Uhn-uhn (negative)," but after listening to the recordings many times, the court cannot hear an audible response.

### III. APPLICABLE LAW & ANALYSIS

The court must determine whether the encounter between Trooper Eldridge and Ms. Gosuk amounted to a seizure; and if it did, whether that seizure was justified. If the seizure was justified, the court must then decide whether Ms. Gosuk validly consented to a search of her luggage.

*a. Did the officer's questioning ripen into an investigative stop?*

Citizens are guaranteed the constitutional right to be free from unreasonable searches and seizures.<sup>5</sup> An officer may not subject a person to an investigative stop unless the officer has reasonable suspicion that "imminent public danger exists or serious harm to persons or property has recently occurred..."<sup>6</sup> Not every interaction with law enforcement amounts to a seizure. Certain contact with police—referred to as "police-citizen contact"—is not considered a seizure. General questioning posed to a person at the scene of a crime, even if that person is a suspect, does not constitute a seizure.<sup>7</sup> An investigatory stop, however, is a seizure for fourth amendment purposes, and exists "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen."<sup>8</sup> An officer exercises a "show of authority" when "a reasonable person, in view of the objective facts surrounding the

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<sup>5</sup> U.S. Const. amend. IV; Alaska Const. art. I, § 14.

<sup>6</sup> *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976).

<sup>7</sup> *Romo v. Muni. of Anchorage*, 697 P.2d 1065, 1068 (Alaska App. 1985) (citing *Palmer v. State*, 604 P.2d 1106, 1111-13 (Alaska 1979)).

<sup>8</sup> *Id.* (quoting *Waring v. State*, 670 P.2d 357, 363 (Alaska 1983)).

incident, would believe that he is not free to leave.”<sup>9</sup> Alaska courts have recognized that when approached by law enforcement,

the average person would feel an obligation to respond to the officer’s questions and not to walk away. Such a confrontation, therefore, will amount to a seizure “only if the officer added to those inherent pressures by engaging in” “conduct which a reasonable man would view as threatening or offensive even if coming from another private citizen.”<sup>10</sup>

The trial court previously found,<sup>11</sup> and the Court of Appeals agreed,<sup>12</sup> that Trooper Eldridge’s initial contact with Ms. Gosuk did not constitute a seizure. The question remains, however, whether the trooper’s persistent questioning transformed the contact into an investigatory stop. The trooper initiated the conversation in a way that an ordinary person would feel as though she could disregard the trooper’s questions and leave. He told Ms. Gosuk that she did not need to speak with him and posed many of his questions using the phrases “would you mind” and “you wouldn’t mind,” indicating that Ms. Gosuk was in control of the situation. The trooper’s words attempted to make the situation appear that Ms. Gosuk had a choice to disregard the troopers’ request, but the trooper continued to ignore Ms. Gosuk’s consistent answers, indicating that the trooper’s actual intention was to search Ms. Gosuk’s luggage. Although Ms. Gosuk repeatedly denied that she had alcohol and repeatedly refused to give consent to a search, the trooper disregarded her responses and continued to pressure her until he believed he had

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<sup>9</sup> *Id.*

<sup>10</sup> *Waring v. State*, 670 P.2d 357, 364 (Alaska 1983)(quoting Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.2, (1st ed. 1978).

<sup>11</sup> *Order Denying Motion to Suppress* (Apr. 13, 2016).

<sup>12</sup> *Gosuk v. State*, 484 P.3d 130, 135 (Alaska App. 2021).

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obtained consent. Early in the conversation he asked her, "do you mind if I ask you a couple of questions," and she responded, "yeah," which indicates she did not want to talk to him. Regardless, he continued the conversation. He asked her four times if she was carrying alcohol and four times she denied it. He asked her ten different times to search her luggage, and she never consented to a search.

Trooper Eldridge spoke quickly throughout the encounter, but remained calm and polite. The fact that Ms. Gosuk was approached by one law enforcement officer that was friendly and calm could indicate that the encounter was not a seizure. But the trooper's ongoing questions and refusal to accept Ms. Gosuk's answers revealed his intention: to keep Ms. Gosuk engaged in his questions until he could look in her bags. Ms. Gosuk likely did not feel that she could end the encounter—as indicated by her eventual acquiescence to the search. Although Ms. Gosuk's subjective belief is not determinative, it is consistent with what a reasonable person in her shoes would have believed. Even an innocent person, considering the circumstances, would have understood that Trooper Eldridge was conveying the message that Ms. Gosuk had to comply with his request.

After a citizen denies wrongdoing a few times, they would expect the conversation to conclude and be free to leave. But Trooper Eldridge kept the accusatory questioning going even after many denials, which would lead a reasonable person to believe they could not end the conversation. The persistent nature of his questioning outweighs the other elements of the interview. Therefore, applying a reasonable person standard to the circumstances of the encounter, the court finds that the encounter did in fact convert into an investigatory stop. Objectively, a reasonable person—even one innocent of a crime—

would conclude that they could not remove themselves from the questioning until the trooper had an opportunity to look in the luggage.

*b. Was the seizure justified?*

An officer is justified in seizing a person if sufficient reasonable suspicion that imminent public danger exists.<sup>13</sup> The officer “must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.”<sup>14</sup>

The community of Togiak is a local option community that has banned the sale, importation and possession of alcohol.<sup>15</sup> When an officer reasonably suspects that a person is presently engaged in transporting alcohol into a local option community, imminent public danger exists. This is particularly true where, like here, the suspect has a history of importing alcohol. Trooper Eldridge received a tip from the VPSO in Togiak on the morning of October 13, 2015 that Ms. Gosuk was importing alcohol into the village of Togiak. The trooper was aware that Ms. Gosuk had a history of importation. He was told that Ms. Gosuk would be on a flight operated by Coupchiak Air between Dillingham and Togiak that morning. The trooper went to the Coupchiak Air terminal and found Ms. Gosuk there at 9:50 a.m. with her luggage on a plane bound for Togiak.

Ms. Gosuk’s presence at the Coupchiak Air terminal corroborated the anonymous tip relayed by the VPSO. The tip, Ms. Gosuk’s criminal history, and Ms. Gosuk’s location at the terminal warrants a particularized and objective basis for

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<sup>13</sup> *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976).

<sup>14</sup> *State v. Moran*, 667 P.2d 734, 735-36 (Alaska App. 1983) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

<sup>15</sup> See AS 04.11.491.



suspecting that Ms. Gosuk was transporting alcohol to a local option community. The investigatory stop, therefore, was justified.

*c. Did Ms. Gosuk validly consent to the search of her luggage?*

A consent search is an exception to the warrant requirement. The State carries the burden to prove that a defendant's consent to a search was unequivocal and specific.<sup>16</sup> To determine whether Ms. Gosuk's consent was valid, the court must consider the totality of the circumstances, "including, but not limited to, the location and tone of the interaction, the ambiguous nature of the trooper's phrasing, the trooper's repeated requests for consent, and Gosuk's actual responses."<sup>17</sup>

The record does not establish that Ms. Gosuk expressly consented to a search of her luggage before Trooper Eldridge opened her tote. The trooper interpreted the following exchange as consent:

AST: Would you mind if we just took a look real quick?...We'd just pop it open, I'll take a look and be out of your hair. It's up to you. We won't do it in front of anybody either.

[pause; AST chuckles]

Gosuk: Yes.

AST: So, is that okay?

[no response]

AST: Okay. Here, why don't you come on with me.

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<sup>16</sup> *Sleziak v. State*, 454 P.2d 252, 257 (Alaska 1969).

<sup>17</sup> *Gosuk*, 484 P.3d at 138.

The only question posed to Ms. Gosuk was whether she minded if the trooper took a quick look in her luggage. Her affirmative response indicates that she did mind, thus denying access to her tote. The question and the response "yes" were not contiguous; rather, they were dissociated by the trooper's additional comments, a pause by Ms. Gosuk, and a chuckle by the trooper. The intervening conduct may have informed the reasoning behind Ms. Gosuk's "yes" response, but it is not clear from the record before the court whether her "yes" response was an unequivocal consent to the search. Just before Trooper Eldridge opened her tote, he inquired again saying, "you don't mind if I took a look, right? I see...you don't mind?" Although the transcript of the proceedings indicate that Ms. Gosuk responded in the negative "Uhn-uhn," the court was unable to hear *any* audible response to the trooper's question. The evidence in the record, therefore, does not support a finding that Ms. Gosuk actually consented to the search before the trooper looked inside her tote.

Even if the responses explained above were indicative of an oral consent to search, Ms. Gosuk's consent was not voluntary. To analyze whether Ms. Gosuk's consent was voluntary, the court considers the totality of the circumstances surrounding the encounter, including the location of the interview, the trooper's tone and mode of questioning, and Ms. Gosuk's responses.

Trooper Eldridge approached Ms. Gosuk in a public place—a small, bush-plane airline terminal—but did ask her to step away from the other customers for questioning. The actual questioning occurred outside and separated from others. The only way Ms. Gosuk could have walked away from the interview was to walk down icy stairs past the

uniformed officer, or return to the location where he first approached her. The location of the interview was much less coercive than a more private location, such as a police station or residence; but the way Trooper Eldridge pulled Ms. Gosuk away from others and situated her in a way that limited her ability to walk away is more coercive than simply speaking to her inside the terminal.

The trooper was polite and calm throughout the interview, but spoke very quickly and frequently did not give Ms. Gosuk an opportunity to answer his questions. Instead, if she did not respond right away or did not answer him in the way he wanted, he kept talking and asked the same question over and over. At one point in the interview the trooper used a past interaction stemming from a sexual assault of Ms. Gosuk's daughter as a way to get Ms. Gosuk to cooperate. But when Ms. Gosuk tried to engage about that investigation, he quickly refocused to the questioning on whether Ms. Gosuk was transporting alcohol, dismissing Ms. Gosuk's ability to have control of the conversation. He did tell Ms. Gosuk several times that she did not need to talk to him and she did not have to let him look in her bags, but when she indicated she did not want to talk to him and she did not want him to look in her bags, the questioning did not end. He did not simply ask Ms. Gosuk a few times; she denied his allegations and request for search *ten* times over thirteen minutes.

Repeatedly requesting consent can transform otherwise neutral questioning into a coercive encounter.<sup>18</sup> The trooper did not accept Ms. Gosuk's unequivocal

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<sup>18</sup> See *State v. O'Neill*, 62 P.3d 489, 504 (Wash. 2003) (noting that many courts "have found that repeatedly requesting consent is a factor to consider in assessing the voluntariness of

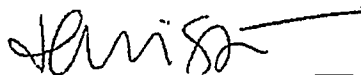
response—that she was not carrying alcohol and did not want her bags searched—as an answer. Instead, he continued to pressure her until she complied. In addition, the way the trooper phrased his questions were quite ambiguous, a dozen times leading his questions with “would you mind” or “you wouldn’t mind?” Initiating questions with “would you mind” or “you wouldn’t mind” can be confusing to the interviewee, but they are particularly confusing when the phrases are used interchangeably—and certainly lead to responses that are equivocal.

After reviewing the encounter between Ms. Gosuk and Trooper Eldridge as a whole, the court finds that any consent she provided was neither unequivocal nor voluntary. The state has not met its burden to prove that Ms. Gosuk’s consent to search her luggage was voluntary or unequivocal.

#### IV. CONCLUSION

Based on the above findings, the undersigned recommends that Ms. Gosuk’s motion to suppress evidence be GRANTED and all evidence seized at the airport be SUPPRESSED. The Court of Appeals continues to have jurisdiction over this matter, therefore, this order shall be transmitted directly to the Court of Appeals.

Dated this 24<sup>th</sup> day of June, 2021.

  
Christina L. Reigh  
Superior Court Judge



consent.”)(citing *United States v. Raibley*, 243 F.3d 1069, 1075–76 (7th Cir. 2001); *United States v. Pulvano*, 629 F.2d 1151, 1157 (5th Cir. 1980); *State v. Garcia*, 827 P.2d 727, 728-29 (Kan. 1992); *Dotson v. Somers*, 402 A.2d 790, 794 (Conn. App. Ct. 1978); *People v. Cardenas*, 604 N.E.2d 953, 956 (Ill. App. Ct. 1992); *State v. Jackson*, 673 N.E.2d 685, 688-89 (Ohio Ct. App. 1996)).

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